

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MWK RECRUITING, INC.
Plaintiff,

v.

**EVAN P. JOWERS, YULIYA
VINOKUROVA, ALEJANDRO VARGAS,
and LEGIS VENTURES (HK) COMPANY
LIMITED (aka Jowers / Vargas),**
Defendants.

Civil Action No. 1:18-cv-00444

EVAN P. JOWERS

Counterclaimant,

v.

**MWK RECRUITING, INC., ROBERT E.
KINNEY, MICHELLE W. KINNEY,
RECRUITING PARTNERS GP, INC.,
KINNEY RECRUITING LLC, COUNSEL
UNLIMITED LLC, and KINNEY
RECRUITING LIMITED**

Counter-defendants.

**EVAN P. JOWERS'S OBJECTIONS TO MWK RECRUITING, INC.'S
MOTION TO STRIKE JOWERS'S REPLY OR, ALTERNATIVELY, MWK'S REPLY
IN SUPPORT OF ITS CROSS-MOTION FOR SUMMARY JUDGMENT
REGARDING LIQUIDATED DAMAGES**

Defendant and Counterclaimant Evan P. Jowers hereby objects to Plaintiff MWK Recruiting, Inc.’s (“Kinney Entities”) Motion to Strike Evan Jowers’s Reply in support of his Motion for Summary Judgment, or alternatively, MWK Recruiting, Inc.’s in support of its Cross-motion for Summary Judgment Regarding Liquidated Damages, filed on April 14, 2021 (the “April 14 Filing”). (Dkt. 277).

For the foregoing reasons, Jowers objects to the Motion in its entirety.

I. The April 14 Filing Does Not State the Grounds or Authority Justifying the Relief Sought.

The April 14 Filing does not cite to any authority, statute, or rules to justify filing a “motion to strike”¹ as required by the local rules of this district. (Western District of Texas L.R. CV-7 (d)(1)) (“All motions must state the grounds therefor and cite any applicable rule, statute, or other authority, if any, justifying the relief sought.”).

The April 14 Filing states Jowers raised an argument for the first time in his Reply brief, and thus should be stricken. (Dkt. 277 at 2.) Kinney Entities’ Motion further argues that the assertion in Jowers’ Reply brief is incorrect “as a matter of law.” *Id.* Even if this were accurate (it is not) these would not be proper grounds to support filing a motion to strike a reply brief in support of a motion for summary judgment.

Thus, Jowers’ Reply should not be stricken.

II. The April 14 Filing is an Impermissible Sur-reply.

The April 14 Filing appears to be a means to substantively respond to Jowers’s Reply brief, however, pursuant to Local Rule CV-7(f)(1) no further submissions on Jowers’ motion for summary judgment can be filed without obtaining leave of Court. *See* Local Rule CV-7(f)(1) (“A party may file a reply in support of a motion. Absent leave of court, no further submissions on the motion are allowed.”)

The April 14 Filing specifically addresses the substance of the points and authorities set forth in Jowers’s Reply concerning liquidated damages, and as such, the April 14 Filing should

¹ Kinney’ Entities’ Motion also includes a “Reply” in support of its “cross-motion for summary judgment” (mentioned in the Kinney Entities’ Response to Jowers motion for summary judgment), however, neither Kinney Entities’ cross-motion for summary judgment, nor the “Reply” comply with FRCP 56. Additionally, the Kinney Entities already have a pending motion for summary judgment filed on January 13, 2021 that has not yet been ruled on. (Dkt. 251).

be viewed as an unauthorized Sur-reply. Again, the Local Rules expressly prohibit Plaintiff to file any further submissions after Jowers' Reply. Plaintiff could have sought leave of court, and Jowers' should have been allowed to respond to any such request for leave of court. Accordingly, the April 14 Filing should not be considered in adjudicating the merits of Jowers' Motion for Summary Judgment.

III. Conclusion.

The April 14 Filing should be denied to the extent it is viewed as a proper motion to strike, and should not be considered otherwise.

Dated: April 20, 2021

Respectfully submitted,

By: /s/ Robert Tauler
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**COUNSEL FOR DEFENDANT
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EVAN P. JOWERS**

CERTIFICATE OF SERVICE

I hereby certify that, on April 20, 2021, I electronically served the foregoing document by email, pursuant to agreement of the parties, addressed as follows:

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